

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.4609 OF 1998

Indian Bank ...Plaintiffs

vs.

Mr.H.M.Shinde & Anr. ...Defendants

Ms Mohana Nair i/b M/s.J.M.B.Partners for the Plaintiffs

CORAM: A.S.OKA, J.
DATE : OCTOBER 22, 2007

P.C.:

1. The suit has been kept under the caption of 'Undefended suits for exparte decree'.

2. According to the case of the plaintiffs the first defendant was originally employed as a Clerk with the plaintiffs. The plaintiffs granted to the first defendant a staff housing loan in the sum of Rs.1,37,984/- on 15th May 1992. The first defendant was also granted a consumer credit loan facility in the sum of Rs.10,000/- as well as a special clean loan facility of Rs.5430/-. The second defendant guranteed repayment of the amount due and payable by the first defendant under the housing loan. In the plaint a reference has been made to the execution of the various documents by the defendants. According to the case of the plaintiffs, as the first defendant did not repay the outstanding amount, Advocate's notice dated 24th February 1997 was sent to him

calling upon him to repay the entire amount. It is alleged that on 20th February 1997 the first defendant executed an acknowledgement of debt cum security in respect of all the three facilities.

3. According to the plaintiffs, by way of security for repayment of using loan, the valid charge was created on the immoveable property more particularly described in Exh.J to the plaint. The suit has been filed as the first defendant failed to repay the amount.

4. The defendants have failed to file the written statement. The plaintiffs have filed an Affidavit of Mr.V.Gokulakrishnan of Mumbai, an Officer of the plaintiffs for proving the claim of the plaintiffs in the suit. The said affidavit is marked 'X' for identification. The plaintiffs have filed various original documents relied upon in the plaint along with a list of documents which is marked as 'Y' for identification. Perusal of the affidavit shows that the claim of the plaintiffs in the suit as well as execution of the various documents by the defendants has been duly proved. The plaintiffs have proved execution of a bill of guarantee by the second defendant. There are clear acknowledgements of debt executed by the first defendant on 20th February 1997. The extracts of the accounts of the three facilities granted to the first defendant are also produced on record. In view of

the documents which are produced on record, the plaintiffs have established their valid charge on the immoveable property described in Exh.J to the plaint and on moveable property described in Exh.W to the plaint. The Plaintiffs have established the liability of the Defendants to pay the principal amounts together with interest upto the date of filing of the suit.

5. In the plaint, the plaintiffs have claimed further interest at the rate of 15.81% p.a. on the amount payable at the foot of the housing loan facility. The plaintiffs have claimed further interest at the rate of 20.91% p.a. on the amount payable under the consumer credit loan facility and have also prayed for a decree in the sum of Rs.8559/- due under the Special Clean Loan facility together with interest at the rate of 14% p.a.

6. Considering the facts and circumstance of the case, further interest deserves to be granted at the rate of 12% p.a.

7. Perusal of the order dated 5th July 1999 passed in the notice of motion No.1691 of 1999 shows that the Court Receiver, High Court, Bombay was appointed as the Receiver of the immoveable property described in Exh.J to the plaint as well as hypothecated assets more particularly described in

Exh.W to the plaint. The Court Receiver was directed to appoint the occupier of the immoveable property as his agent. The Receiver appointed during the pendency of the suit will continue to act as Receiver in execution to enable the plaintiffs to take appropriate steps in execution proceedings.

8. Hence, I pass the following order :

- i) The suit is decreed in terms of prayer clauses (a) to (c) with a modification that further interest payable on the principal amounts due and payable on the facilities mentioned therein will be at the rate of 12% p.a. from the date of institution of the suit till realisation.
- ii) There will be also a decree in terms of prayer clauses (d) to (h). The defendants are directed to pay costs of the suit to the plaintiffs.
- iii) The appointment of the Court Receiver will continue to operate for a period of six months to enable the plaintiffs to take appropriate steps in execution proceedings.
- iv) The plaintiffs will be entitled to refund of court fees, if any, as per the rules. Certified copy is expedited.

JUDGE